

ZONING BOARD OF APPEALS
MEETING MINUTES

June 14, 2011

4:00 P.M.

CALL TO ORDER: Mr. John Stetler, Chairperson called meeting to order at 4:00 P.M.

ATTENDANCE:

Members Present: Deland Davis Carlyle Sims
Greg Dunn Becky Squires
James Moreno John Stetler

Members Excused: Mike Fatt

Staff Present: Jill Steele, Deputy City Attorney
Glenn Perian, Senior Planner
Leona Parrish, Admin. Assistant, Planning Dept.

ADDITIONS OR DELETIONS TO THE AGENDA: None

OLD BUSINESS:

A) **Appeal #Z-02-11: (Parcel #2550-00-013-0 Upton Avenue)** Petition from Adams Outdoor Advertising, Mr. William B. Jackson, Real Estate Manager, 407 Ransom, Kalamazoo, MI 49007. First request is an appeal of Planning Staff determination for replacement of billboard sign; and pending their decision, a request for a variance to allow for a billboard sign to be reconstructed. Parcel is zoned "C-3 Intensive Business District" and commonly known as vacant lot on Upton Avenue, Parcel #2550-00-013-0. The permit application is requested pursuant to Planning and Zoning Code, Chapter 1296.28(e) & 1296.39(f).

It was noted that the Planning Department has not heard from petitioner since last month when they asked to have their petition postponed. Ms. Jill Steele, Deputy City Attorney noted that the petitioner is in discussion with possibly coming up with a resolution for their variance request and suggest the board postpone until the next meeting allowing them additional time.

MOTION: MR. JAMES MORENO MADE A MOTION TO POSTPONE APPEAL #Z-02-11 UNTIL THE NEXT ZONING BOARD MEETING; SUPPORTED BY MR. DELAND DAVIS.

MR. JOHN STETLER ASKED FOR ANY ADDITIONAL COMMENTS, SEEING NONE A VOTE WAS TAKEN; ALL IN FAVOR; NONE OPPOSED, **MOTION APPROVED.**

Mr. John Stetler, Chairperson stated the meeting procedure and that everyone present may speak either for or against an appeal. He stated he will ask for a staff report to be read and then open the public hearing. At the public hearing persons may come forward and state their name and address for the record as it is being recorded and then speak either for or against an appeal. The public

hearing will then be closed and the zoning board will discuss and make a decision. Mr. John Stetler stated if denied they may appeal to the Circuit Court.

NEW BUSINESS:

A. Appeal #Z-05-11: Petition from Mr. & Mrs. David and Mary Shear, 123 N. Moorland Drive, Battle Creek, MI 49015. Request is for a dimensional variance to allow for an accessory building to be built with a 17 ft. front-yard setback. Parcel is zoned "R-1B Single Family Residential District" commonly known as 123 N. Moorland Drive, Parcel #2333-04-602-0. The permit application is requested pursuant to Planning and Zoning Code, Chapter 1286.05(a).

Mr. Glenn Perian, Senior Planner outlined the report stating this is a petition from Mr. and Mrs. Shear seeking a dimensional variance to construct a storage building 17' feet from a front property line, in a side yard at 123 N. Moorland. The property is located in a residential zoning district. The main residential structure contains an attached area for the storage of vehicles and personal property (an attached garage); therefore, the ordinance states accessory buildings must be located in the rear yard. The subject lot is approximately 204' wide by 75' deep and meets the minimum lot standard for the R-1B zone. Because of the shape of the lot and the location of the residence, it makes it nearly impossible for the Appellant to locate an accessory building in the rear yard. Staff is recommending approval of appeal #Z-5-11 based on the following findings and those listed in the staff report:

- 1) Staff believes that the Appellant has clearly demonstrated that practical difficulty will exist if the variance is not granted in that the lot is unusually wide with very little depth leaving limited options other than a side yard to place an accessory structure.
- 2) Staff does not believe the practical difficulty is self created in this case. As stated before, the lot is very wide with very little depth.
- 3) Staff finds that the practical difficulties are exceptional and peculiar to the subject property.
- 4) Staff does not believe the term practical difficulty is deemed financial hardship in this case. The property owner is planning on investing in the property by adding the accessory structure to store personal items inside.

Mr. Rick Lang, 6828 2 ½ Mile Road, East Leroy, MI, was present on behalf of petitioner as their building contractor. Stated they would like to place a 24 x 32 storage building in the adjacent yard and had requested the variance because of the unusual lot dimensions. Stated it is impossible to place in the rear yard; if measured from the lot-line on the north end of the house it is 24 ft. and on the south side it is 27 ft. and would be impossible to put a building back there.

Mr. Deland Davis stated when he visited the site he would agree that you could not build a structure in the rear and that the dimensions of the parcel are odd. Mr. Davis noted that the setback from the front is 30 ft. for that zone and the request is for 17 ft.; asked if the accessory building could be setback more to the rear of the parcel.

Mr. Lang stated, yes that the storm had destroyed the large trees on the property and can now build the accessory building back as far as possible.

Mr. Deland Davis had not measured but it looked as though it were more than 17 ft. and asked if the property owner would agree with the building being placed back more. Mr. Lang stated he thinks it would be more like 24' or 25' feet back now that the tree is being removed.

Mr. Davis asked if the property owner would then be satisfied if it were like 25 ft. instead of 17 ft. back. Mr. Lang stated yes.

Mr. Greg Dunn asked what would be the back yard setback. Mr. Perian stated it would be 3 ft. from the rear to the south side.

Mr. Carlyle Sims asked if they could set the front of the building back to line up with the front of the home. Mr. Lang stated with the tree removed they are going to try and line it up exactly with the home itself and do not have the exact measurement with him and because of the storm his records were lost on his computer and are trying to retrieve them. Mr. Sims stated because of aesthetics he believes it would not look so much out of place if it were even with the home. Mr. Lang stated he agrees.

Mr. John Stetler asked if there were enough land there to set it back or do they not want to remove any trees. Mr. Lang stated before the storm they did not want to remove the trees; now with them removed they will gain another 6' to 9' foot to the west end of the property.

Mr. Stetler asked staff if it were even with the rear of the house, would that put it in the back yard in this case because of the dimensions of the lot. Mr. Perian stated no, it would have to be behind the rear supporting member of the house; which would not be possible.

Mr. John Stetler asked if there were any others here to speak for or against this variance, seeing none he called this public hearing to a close and would entertain a motion.

MOTION: MR. DELAND DAVIS MADE A MOTION TO APPROVE APPEAL #Z-05-11 FOR A VARIANCE TO ALLOW CONSTRUCTION OF AN ACCESSORY BUILDING WITH THE CONDITION IT BE BUILT 25 FT. FROM FRONT-YARD PROPERTY LINE INSTEAD OF THE 17 FT. AS REQUESTED ON THEIR APPLICATION; SUPPORTED BY MR. JAMES MORENO.

Discussion:

Mr. John Stetler stated that outbuildings are not his favorite thing and asked what was acceptable and what dimensions would they not approve on any site. Stated some sites are not designed to build a house on as they are not large enough and does not see anything unique about this property and he does not feel it is necessary to place to the front of the property.

Mr. Carlyle Sims stated he does not know where the 25 ft. would be and would vote yes to allow the accessory building to be placed in-line with the front of the home as it would not appear unpleasant; asked Mr. Lang what the setback is for the residence from the front property line. Mr. Lang stated he did not have the paper work with him noting the front setback for the residence.

Mr. Glenn Perian stated the measurement according to the aerial GIS map it is approximately 24 ft or 25 ft. from residence to front property line; noted that aerial map is not exact. Mr. Sims asked Mr. Perian if the accessory building were lined up with the front of the residence would it meet the rear property setback. Mr. Perian stated, yes as it needs to only be 3 ft. from rear property line.

Mr. Greg Dunn according to the drawing provided the plan was to have it 24 ft. wide from front to back and still have 17 ft to either side and would have 58 ft. to work with. Stated there are two parts to the

variance; one would be to allow the construction to the side rather than the rear yard and the other would be how far of an offset would be needed from the front property line and appear to be with the tree gone they would not need the setback from the front property line and could stay within the front and rear setback required by the ordinance.

Mr. John Stetler stated the ordinance requires that accessory buildings be behind the residence. Mr. Perian stated they could build the size of building they want on the property, but the issue is the front-yard setback is 30 ft. in an "R-1B" zone and need a side-yard and front-yard.

Mr. Greg Dunn asked if it could be constructed beside the house rather than what they defined as a rear yard and because they have 34 ft. setback to work with it could be 30 ft. from the front and still 3 ft. from the back property line and continue to build the building 24 ft. wide; so the minimum variance they could give would be to waive rather than requiring a rear yard as is required in the ordinance and allow the accessory building to be constructed beside the house rather than behind it, but still within the dimensional setbacks as required.

Mr. Stetler asked if they allowed this, is there a situation when you did not want them in the side yard. Mr. Dunn stated this property is unique because of the lot dimensions as outlined in the staff report and having the septic system on the other side makes it difficult; that it can be done as the ordinance allows if we allow it to be built with the least variance needed. Said for him the question is do we allow them to have an accessory building, yes; do they say the property is odd shaped and therefore cannot use the rear yard, yes; and in this case should be able to construct it on the side-yard; but they can do everything that they want to do and still stay within the setbacks as required under the ordinance and his argument would be rather than saying 25 ft. as Mr. Davis motion was; why not follow the ordinance in terms of setbacks and still have their building with the least variance that would still allow construction of the property.

Mr. Deland Davis stated he would like to go with the 30 ft. also Mr. Dunn; but when he looked at the property with the trees still down it still looked as though there were still stuff back there and is difficult to determine if they could still build with the setbacks. Said looking at the other properties on the street he did not see any property where he would approve it being on the side yard, other than one other property exception.

Mr. Greg Dunn stated it depends if they want to stay with 25 ft. or if they want to enforce the rest of the ordinance and say they need the 30 ft. setback. Said if the board feels they need to hold to the 30 foot setback then he suggest that Mr. Davis and Mr. Moreno withdraw the previous motion and he could make an alternative motion that might preserve the setback while allowing a variance in this case the accessory building only on the side of the property as the homeowner wishes.

Mr. John Stetler stated the only alternative to that would be to vote down the 25 ft. and voted against it and a new motion was made with the 30 ft. setback; that could happen also. Mr. Dunn stated that was correct; it could be an alternative. Stated he personally cannot support the current motion as it can be placed on the side adjacent to their residence, as he does not understand why they need the extra 5 ft., if there was a practical reason; but feel they can do what they want to do and stay within the setbacks as required by the ordinance and say that it is acceptable to build adjacent to their residence due to the unique contours of the lot.

MR. JOHN STETLER ASKED FOR ANY ADDITIONAL COMMENTS, SEEING NONE A VOTE WAS TAKEN ON MOTION TO ALLOW A 25 FT. SETBACK; TWO IN FAVOR (DAVIS AND SQUIRES); FOUR OPPOSED (DUNN, MORENO, SIMS, AND STETLER), MOTION FAILED.

MOTION: MR. GREG DUNN MADE A MOTION TO APPROVE APPEAL #Z-05-11 FOR A VARIANCE TO ALLOW CONSTRUCTION OF AN ACCESSORY BUILDING TO BE BUILT ON THE SOUTH SIDE ADJACENT TO RESIDENCE ACCORDING TO ORDINANCE SETBACK REQUIREMENTS; SUPPORTED BY MR. CARLYLE SIMS.

Discussion:

Ms. Jill Steele, Deputy City Attorney called for a point of order and suggested that because they are varying from the staff report; if they would put that they believe that there is a peculiarity to the property and that it is not deep and that they meet the standards for a variance because of the peculiar nature of the lot and that is what the motion is based on. Mr. Dunn stated that is correct, he feels there is room working within the requirements of the ordinance for a 30 ft. front yard set-back and a 3 ft. rear yard setback to fit a building that is 24 ft. wide on a property side yard and disagree with the staff report that it would be necessary to grant a further variance from the front yard setback in this case based on the dimensions outlined in the application received.

MR. JOHN STETLER ASKED FOR ANY ADDITIONAL COMMENTS, SEEING NONE A VOTE WAS TAKEN; FIVE IN FAVOR (DAVIS, DUNN, MORENO, SIMS, & SQUIRES; ONE OPPOSED (STETLER), MOTION APPROVED.

APPROVAL OF MINUTES:

MOTION: WAS MADE BY MR. CARLYLE SIMS TO APPROVE THE MAY 10, 2011 ZONING BOARD OF APPEALS MINUTES AS PRESENTED; SUPPORTED BY MS. BECKY SQUIRES ALL IN FAVOR; NONE OPPOSED, MOTION CARRIED – MINUTES APPROVED.

COMMENTS BY THE PUBLIC: None

COMMENTS BY THE MEMBERS / STAFF:

Mr. Greg Dunn wished the staff and fellow members of the zoning board a happy and safe 4th of July holiday as they will not be meeting before then.

ADJOURNMENT: Mr. John Stetler made a motion for the meeting to be adjourned; all stated in favor, meeting was adjourned at 4:27 P.M.

Submitted by: Leona A. Parrish
Administrative Assistant, Planning Department